The following is a summary of an interview of the above listed witness in an Inmate Reception Center unit level investigation. Witness Vivian Garcia was interviewed by Lieutenant Karl Schow at Norwalk Station.

On June 1, 2008, Witness Garcia was assigned as a patrol deputy in the city of Norwalk. She responded to a hit and run investigation call on the 605 freeway at Alondra Boulevard in the City of Norwalk. She was contacted by a California Highway Patrol officer who handed her Subject Rubio's badge and stated that Subject Rubio was "Deuce". Witness Garcia understood this to mean that Subject Rubio was under the influence of alcohol. Subject Rubio initially told Witness Garcia that he had been involved in a traffic collision on the freeway. Subject Rubio claimed that another vehicle cut him off and he swerved and hit the curb as he traveled southbound on the 605 freeway.

The witness involved in the collision (Witness [redacted] stated that Subject Rubio ran the red signal westbound on Imperial Highway at the driveway of the Food For Less Store. As Witness [redacted] made a left turn, Subject Rubio hit his vehicle. Subject Rubio looked in the witness' direction and fled the scene. Witness [redacted] found Subject Rubio standing on the shoulder of the southbound 605 freeway near his vehicle. Witness [redacted] complained of pain to his right hand, but declined medical attention. Witness Garcia noted that both vehicles had damage and Subject Rubio's vehicle had paint transfer.

Witness Garcia then re-contacted Subject Rubio. She could smell the strong odor of alcohol on his breath. She attempted to ask him some pre-field sobriety test questions, but he ignored her and continued to speak to someone on his cell phone. He then walked away from Witness Garcia and contacted two females that were parked on the shoulder of the road. Subject Rubio was leaning on the driver's door to maintain his balance. He was dangerously close to on-coming traffic. Subject Rubio ignored Witness Garcia's demands to return to her position.

Deputy Garcia had to approach Subject Rubio and grab him by the arm to move him to a safer spot to continue her investigation. Sergeant Anthony Campbell and Deputy Christine Ostrander arrived on scene to assist with the investigation. Deputy Ostrander assisted Witness Garcia with the field sobriety tests. Subject Rubio continued to be uncooperative during the process. He denied drinking alcohol that day and claimed he hadn't consumed alcohol in a week. He sucked his teeth and rolled his eyes as he was being questioned. At one point Subject Rubio agreed to take a preliminary alcohol screening test (PAS) in the field. When an officer arrived with the PAS device, Subject Rubio refused. Based upon their observations, Witness Garcia and Deputy Ostrander placed Subject Rubio under arrest for driving under the influence of alcohol, 23152(a)

CVC and 23152(b) CVC and hit and run, 20002(A) CVC.

Subject Rubio was transported and booked at Norwalk Station. During the booking process, Subject Rubio continued to be uncooperative. Each time Witness Garcia asked Subject Rubio a booking question, he would sigh and roll his eyes. When Witness Garcia discovered a tattoo on Subject Rubio's neck that he failed to disclose, he smirked and said, "I guess I forgot." Subject Rubio then said something under his breath that Witness Garcia could not hear. As Subject Rubio signed the booking paper work he told Witness Garcia, "You must be really proud of yourself, this must be quite a hook for you." Witness Garcia then ended her contact with Subject Rubio.

It should be noted that Witness Garcia completed a written memorandum following her contact with Subject Rubio. Her report is consistent with the details she provided during this interview (see exhibit A).

The following is a summary of an interview of the above listed witness in an Inmate Reception Center unit level investigation. Witness Christine Ostrander was interviewed by Lieutenant Karl Schow at Norwalk Station.

On June 1, 2008, Witness Ostrander responded to the 605 freeway in the city of Norwalk to assist Deputy Vivian Garcia with a hit and run investigation. Deputy Garcia was in the process of administering field sobriety tests to a suspect later identified as Subject Juan Rubio. Subject Rubio was given the opportunity to take a preliminary alcohol screening test (PAS) in the field, but he refused. Deputy Garcia subsequently formed the opinion that Subject Rubio was under the influence of alcohol and had been involved in a hit and run collision. He was placed under arrest and seated in Witness Ostrander's patrol car. Witness Ostrander noticed that Subject Rubio's eyes were watery and bloodshot and had a glazed appearance. She also smelled the odor of an alcoholic beverage on his breath. Witness Ostrander subsequently transported Subject Rubio to Norwalk Station.

During the booking process, Subject Rubio submitted to preliminary alcohol screening test (PAS). The test was given twice and resulted in a .198% and .187% reading. Subject Rubio also submitted to an Intoximeter breath test. This test was also given twice and resulted in a .18% and .18% reading.

Deputy Garcia pointed out a tattoo on Subject Rubio and told him, "I thought you had no tattoos.". Subject Rubio sucked his teeth and said, "I must have forgot about it or you're just too short." Witness Ostrander noted that his demeanor was belligerent and disrespectful. Witness Ostrander mentioned that she and Deputy Garcia offered Subject Rubio every opportunity to come clean and tell the truth but he refused to cooperate. Witness Ostrander is not sure if Subject Rubio acted this way because they were female deputies or because he truly believed he did nothing wrong.

It should be noted that Witness Ostrander completed a written memorandum following her contact with Subject Rubio. Her report is consistent with the details she provided during this interview (see exhibit B).

IAB INVESTIGATION
CASE IV2221172
WITNESS ANTHONY CAMPBELL

The following is a summary of an interview of the above listed witness in an Inmate Reception Center unit level investigation. Witness Campbell was interviewed by Lieutenants Karl Schow and Margarito Robles at Norwalk Station.

On June 1, 2008, Witness Anthony Campbell was assigned as a field sergeant at Norwalk Station. He responded to a DUI-traffic collision investigation on the southbound 605 freeway in the city of Norwalk. Deputy Vivian Garcia had requested his response because the incident involved an off duty deputy (Subject Juan Rubio). Subject Rubio told Witness Campbell that he was assigned to Men's Central Jail. Witness Campbell asked Subject Rubio what happened. Subject Rubio was evasive and only mentioned that he had abandoned his car on the freeway. Subject Rubios' statement contradicted a witness statement by another driver. This witness stated that Subject Rubio hit his vehicle in the intersection on Imperial Highway and fled the scene. The witness located Subject Rubio's vehicle on the freeway shoulder as he drove home.

Witness Campbell noted that both vehicles had damage from a collision. Witness Campbell could smell the odor of an alcoholic beverage on Subject Rubio's breath. Subject Rubio initially agreed to give a breath sample in the field, but when the preliminary alcohol screening device (PAS) arrived via a CHP officer, Subject Rubio refused to take the test.

Although Subject Rubio followed Witness Campbell's direct commands, he was uncooperative with Deputy Garcia. For example, Subject Rubio would only complete portions of the field sobriety tests administered by Deputy Garcia. At one point during these tests, Subject Rubio walked away from Deputy Garcia to talk to the occupants of another vehicle parked on the freeway shoulder. Subject Rubio eventually returned and completed the tests. Based upon his observations, Witness Campbell formed the opinion that Subject Rubio had been involved in a hit and run collision and was under the influence of alcohol. He directed Deputy Garcia to place Subject Rubio under arrest and transport him to Norwalk Station.

Witness Campbell had no further contact with Subject Rubio.

It should be noted that Witness Campbell completed a written memorandum following his contact with Subject Rubio. His report is consistent with the details he provided during this interview (see exhibit C).

IAB INVESTIGATION
CASE IV2221172
WITNESS ADRIANNE WINN

The following is a summary of an interview of the above listed witness in an Inmate Reception Center unit level investigation. Witness Adrianne Winn was interviewed by Lieutenant Karl Schow at Norwalk Station.

On June 1, 2008, Witness Winn was the assigned custody assistant-jailer at Norwalk Station. Deputies Vivian Garcia and Christine Ostrander escorted Subject Juan Rubio into the booking area. Witness Winn was tasked with completing the Livescan and assisting with the booking process of Subject Rubio.

Witness Winn noted that Subject Rubio physically complied with the livescan process but made several belligerent remarks to Deputy Garcia. He also sucked his teeth during the booking process. At one point Subject Rubio said, "This is your big arrest, anything for a stat." Deputy Garcia then passed behind Subject Rubio and noticed a tattoo on the back of his neck. When Deputy Garcia mentioned that he failed to disclose this tattoo to her during the Livescan process, he replied, "I guess you're too short to see it." Subject Rubio then said he must have forgotten about the tattoo. Witness Winn subsequently told Subject Rubio, "That's enough, you don't need to be disrespectful." Subject Rubio then complied with the remainder of the booking process.

Witness Winn stated that later that shift, Subject Rubio's captain arrived and talked with him. Witness Winn could not remember his name, but said he was a very nice man. The captain put his hand on Subject Rubio's shoulder and said, "We are just going to deal with this. You can come and see me when you are released. When you are ready, I will come back and get you and drive you home." Subject Rubio was angry and said, "No, I'm not staying here. My girlfriend is outside. I'm not staying." The captain told Subject Rubio that he would be staying. The captain then left. Witness Winn was surprised at how Subject Rubio acted in front of the captain.

It should be noted that Witness Winn completed a written memorandum following her contact with Subject Rubio. Her report is consistent with the details she provided during this interview (see exhibit D).



IAB INVESTIGATION
CASE IV2221172
WITNESS [redacted]

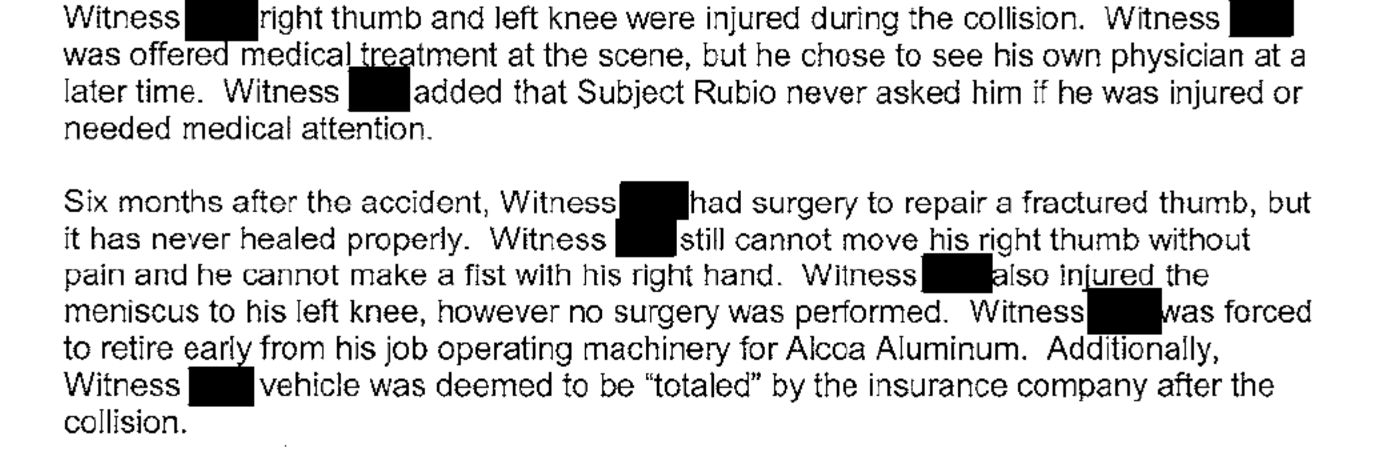
The following is a summary of an interview of the above listed witness in an Inmate Reception Center unit level investigation. Witness [redacted] was interviewed by Lieutenant Karl Schow. Due to the fact that Witness [redacted] speaks limited English, his daughter [redacted] assisted with translation from Spanish to English.

Witness [redacted] told me that he was attempting to make a left turn to enter the Food For Less Market from East bound Imperial Highway. This left turn bay is controlled by a signal and Witness [redacted] proceeded to turn on the green arrow. As Witness [redacted] turned, his vehicle was struck by a green truck that was traveling west bound on Imperial Highway. The collision caused Witness [redacted] car to spin. The driver of the green truck did not stop and in fact accelerated away from the intersection toward the 605 freeway. Witness [redacted] got a good look at the driver as he passed by.

After the collision, Witness [redacted] felt pain to his right hand and his left knee. Witness [redacted] pulled into the Food For Less Market parking lot (10901 Imperial Highway, Norwalk CA) and retrieved a portion of his rear fender that came off during the collision. Witness [redacted] decided not to call law enforcement and instead went into the store to complete his shopping. He then left the location and subsequently entered the southbound 605 freeway to return home. As he traveled southbound, he noticed a green truck that looked similar to the one that had hit him. The green truck was stopped on the freeway shoulder. Witness [redacted] pulled in front of the truck and stopped. He recognized the driver (Subject Rubio) as the person who had hit him.

Witness [redacted] approached Subject Rubio and asked him why he ran. Subject Rubio stated that he was afraid. Witness [redacted] could smell the odor of alcohol on Subject Rubio's breath. Witness [redacted] asked Subject Rubio for his insurance information and Driver's license. Subject Rubio refused, but stated that he would pay to fix for the damages to Witness [redacted] car. Witness [redacted] told him that if the police arrived, Subject Rubio would be in trouble. Subject Rubio displayed his badge and said, "I'm a cop aren't you afraid of me?" Witness [redacted] said, "Why should I be afraid of you, you're a person like everybody else." Subject Rubio replied, "Well I'm a cop you should be afraid of me." Subject Rubio appeared to be angry.

At that moment, a California Highway Patrol officer arrived on the scene. Moments later, additional officers arrived and Witness [redacted] was separated from Subject Rubio. Witness [redacted] did not have any additional contact with him. Witness [redacted] told several officers the details of the incident. An officer told Witness [redacted] that Subject Rubio claimed that he was waiting on the side of the freeway to exchange information with Witness [redacted] Witness [redacted] replied, "Why would he wait here, the accident happened on Imperial Highway?" The officers continued their investigation and at one point Witness [redacted] could see the officers conducting field sobriety tests on Subject Rubio.


Witness [redacted] right thumb and left knee were injured during the collision. Witness [redacted] was offered medical treatment at the scene, but he chose to see his own physician at a later time. Witness [redacted] added that Subject Rubio never asked him if he was injured or needed medical attention.

Six months after the accident, Witness [redacted] had surgery to repair a fractured thumb, but it has never healed properly. Witness [redacted] still cannot move his right thumb without pain and he cannot make a fist with his right hand. Witness [redacted] also injured the meniscus to his left knee, however no surgery was performed. Witness [redacted] was forced to retire early from his job operating machinery for Alcoa Aluminum. Additionally, Witness [redacted] vehicle was deemed to be "totaled" by the insurance company after the collision.

The following is a summary of an interview of the above listed subject in an Inmate Reception Center unit level investigation. Subject Rubio was interviewed by Lieutenants Karl Schow and Kevin Kuykendall. Subject Rubio's representative, Helen Schwab was also present.

Subject Rubio was asked to describe the events that occurred on June 1, 2008 while he was off duty in the city of Norwalk. Subject Rubio remembers driving westbound on Imperial Highway when he collided into a vehicle at an intersection near the 605 Freeway. Witness Rubio said he did not use his best judgement and left the scene. Subject Rubio continued westbound on Imperial Highway, entering the southbound 605 Freeway heading towards his home.

Shortly after entering the freeway, Subject Rubio's vehicle became disabled with a flat tire. Subject Rubio was forced to pull onto the freeway shoulder. Approximately 20-30 minutes later, the driver of the other vehicle (Witness [redacted]) pulled onto the freeway shoulder in front of Subject Rubio's vehicle. Subject Rubio asked Witness [redacted] if he was alright. Witness [redacted] said he was ok but demanded that Subject Rubio repair his car. Subject Rubio promised to fix his car but was more concerned about whether Witness [redacted] was injured.

At this point, a California Highway Patrol Officer arrived on scene. Shortly thereafter, deputies and a sergeant from Norwalk Sheriff's Station arrived. Subject Rubio identified himself as a deputy and presented his badge and identification to law enforcement personnel. Subject Rubio's girlfriend and his mother also arrived on scene and he contacted them as well.

Subject Rubio could not recall what he told the handling deputy (Witness Vivian Garcia) about how he damaged his car. However, Subject Rubio admitted that he was provided with copies of the arrest reports by his criminal attorney and was surprised by his poor behavior. Subject Rubio believes he cooperated with Witness Garcia during the investigation but admitted the criminal reports don't support this belief.

Subject Rubio could not recall what he told the sergeant when asked if he had been drinking. However, during the interview Subject Rubio stated that it was obvious that he had been drinking. Subject Rubio was asked if he was given an opportunity to take a preliminary alcohol screening test (PAS) in the field. He stated, "I'm sure it happened, but I don't recall."

Subject Rubio recalled being asked to perform field sobriety tests. From Subject Rubio's understanding his performance was poor. He was subsequently arrested and

booked by Witness Garcia at Norwalk Station. Subject Rubio stated that he later plead no contest to driving under the influence of alcohol, 23152(b) CVC and hit and run, 20002(A) CVC.

Subject Rubio could not remember specifics, but admitted that he did not have the best behavior at the station. He was embarrassed by what happened. Subject Rubio was asked about his response when Witness Garcia discovered a tattoo on his neck and back area. Subject Rubio could not recall, but was shocked by what he read in the report. Subject Rubio was asked if he recalled telling Witness Garcia, "I must have forgot or you're just too short to see it." Subject Rubio stated, "the incident happened over a year ago, but I'm not saying I didn't make the mistake or say those things."

Subject Rubio recalls being booked and held until he was picked up by Captain Gerald Cooper around midnight.

Subject Rubio was asked if his actions are what he would expect from a deputy sheriff. He stated, "No way." Subject Rubio admitted that he is aware of the embarrassment that he brought upon himself, his family and the Department. Subject Rubio stated that he has completed all court mandated programs including a nine month DUI class. Subject Rubio hopes he can use his experiences to keep his friends and co-workers out of trouble.



Leroy D. Baca, Sheriff

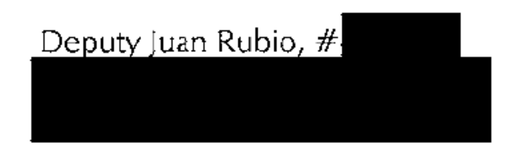
County of Los Angeles

Sheriff's Department Headquarters

4700 Ramona Boulevard
Monterey Park, California 91754-2169



December 8, 2009



Deputy Juan Rubio, #[redacted]

Dear Deputy Rubio:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business December 30, 2009.

An investigation under File Number IAB 2221172, conducted by Inmate Reception Center, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about June 1, 2008, while off duty, you were arrested by Norwalk Sheriff's Deputies for 23152(a) & (b) CVC, Driving Under the Influence of Alcohol with a Blood Alcohol Content of .08% or Higher and 20002(a) CVC, Hit and Run with Property Damage. On December 12, 2008, you pled nolo contendere to 20001(a) CVC and 23152(b) CVC. By your actions, you have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/040.76, Obstructing an Investigation/Influencing a Witness; and/or 3-01/040.85, Cooperation During Criminal Investigation; and/or 3-01/040.70, False Statements; and/or 3-01/050.10, Performance to

Standards; an/or 3-01/050.15, Duties of Deputy Personnel, on or about June 1, 2008, while off duty and intoxicated, you left the scene of a traffic collision on Imperial Highway in the City of Norwalk wherein you struck Mr. [redacted] vehicle and then fled the scene. Mr. [redacted] later found you standing on the shoulder of the southbound 605 Freeway near your disabled vehicle and approached you to exchange information. You refused to give him your insurance information and driver's license and Mr. [redacted] called the California Highway Patrol to respond to the location. Norwalk Sheriff's Deputy Vivian Garcia also responded. Deputy Garcia attempted to ask you some pre-field sobriety test questions and you behaved in a belligerent and/or uncooperative and/or disrespectful manner, and/or made false statements, as evidenced by, but not limited to, telling Deputy Garcia that an unknown person cut you off on the freeway, causing you to collide with the west curb of the freeway, and/or saying to Deputy Garcia, "Honey, the truth will come out," or words to that effect, and/or ignoring her commands and continuing to talk on your cell phone, and/or walking away from Deputy Garcia and contacting your girlfriend who was now parked on the shoulder of the freeway, and/or continuing to ignore Deputy Garcia's commands to return to her position, necessitating that Deputy Garcia approach you and grab you by the arm to move you to a safer location. When Deputy Garcia questioned you about any medical problems or medication you might be taking, you responded by saying words to the effect of, "No already!" After Sergeant Anthony Campbell and Deputy Christine Ostrander arrived on scene, you continued to be uncooperative and/or made false statements by denying you had been drinking and/or claiming you had not consumed alcohol in a week and/or telling them you struck an unoccupied vehicle and waited 50 minutes for someone to arrive even though the collision occurred on Imperial Highway and Mr. [redacted] had been inside the vehicle at the time of the collision, and/or lying to Sergeant Campbell about your unit of assignment. During the questioning, you sucked your teeth and rolled your eyes in a disrespectful and belligerent manner. During the booking process when Deputy Garcia pointed out a large tattoo on your neck and asked you why you told her you had no tattoos, you responded by saying words to the effect of, "I must have forgotten about it or you're just too short to see it." Moreover, you made comments to Deputy Garcia, including but not limited to, words to the effect of,"You must

be really proud of yourself. This must be quite a hook for you, anything for a stat ."

Thus, you failed to conform to the work standards established for your position as a deputy sheriff. Moreover, your actions during this incident are in direct conflict with this Department's Core Values, Mission and Creed and you have brought discredit and embarrassment upon yourself and the Sheriff's Department.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Alexander Yim, on December 29, 2009, at 1300 hours, in his office, which is located at Twin Towers Correctional Facility, 450 Bauchet Street, Los Angeles, Room E-826. If you are unable to appear at the scheduled time and wish to schedule some other time prior to December 29, 2009, for your oral response, please call Chief Yim's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Yim's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Yim's office by no later than December 29, 2009.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Karyn Mannis

Karyn Mannis, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

KM:lh

c: Advocacy Unit
Employee Relations Unit
Chief Alexander Yim, Correctional Services Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2221172)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

COMMISSIONERS: EVELYN V. MARTINEZ • VANGE FELTON • CAROL FOX • LYNN ADKINS • Z. GREG KAHWAJIAN
LAWRENCE D. CROCKER, EXECUTIVE DIRECTOR • SANDY STIVERS, DEPUTY EXECUTIVE DIRECTOR

October 19, 2011

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***JUAN RUBIO*** *a hearing on his* ***discharge****, effective January 19, 2010, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 10-34**.

The Civil Service Commission, at its meeting held on October 12, 2011, approved findings in the above-entitled case. The objections submitted were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

c: Juan Rubio
Mitch Kander
Daniel Carmichael
John Harris

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the **discharge**, effective January 19, 2010, from the position of Deputy Sheriff, Sheriff's Department, of: **JUAN RUBIO** **(Case No. 10-34)**	ORDER OF THE CIVIL SERVICE COMMISSION

On October 12, 2011, the Civil Service Commission of the County of Los Angeles, having read the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, over-ruled the petitioner's objections and adopted, as its final decision, the Findings of Fact, Conclusions of Law and recommendation of its duly appointed Hearing Officer, John Harris, to sustain the Department in the discharge

Dated this 19th day of October, 2011.

LYNN ADKINS, President

VANGE FELTON, Member

CAROL FOX, Member

(ABSENT)
Z. GREG KAHWAJIAN, Member

EVELYN V. MARTINEZ, Member

COPY

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COUNTY OF L.A.
2011 JUN 24 AM 10: 48
CIVIL SERVICE
COMMISSION

LOS ANGELES COUNTY
CIVIL SERVICE COMMISSION

In the Matter of the Petition of	
JUAN RUBIO	
	Case No. 10-34
Appellant	HEARING OFFICER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED DECISION
and	
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT	
Respondent	

APPEARANCES

For the Appellant:	Mitchell Kander Esq. Green & Shinee
For the Respondent:	Daniel C. Carmichael Esq. Law Offices of William Balderrama
Hearing Officer:	John D. Harris
Hearing Dates:	November 5 and 10, 2010 March 24 and 25, 2011
Closing date for briefs:	May 26, 2011
Final date to submit report:	July 5, 2011

INTRODUCTION

The Department notified the Appellant in a Notice of Discharge dated January 19, 2010 that he was discharged from his position of Deputy Sheriff with the Department,

and from County service, effective at the close of business on January 19, 2010.

The Department alleged that on June 1, 2008, Appellant was arrested by Norwalk Sheriff's deputies for a violation of California Vehicle Code Section 23102(a) and (b) [Driving Under the Influence of Alcohol with a blood alcohol level in excess of .08%] and Section 20002(a) [Hit and Run Driving].

Appellant initially denied the allegations, denied that there were sufficient grounds for discipline, and asserted that even if the allegations were found to be true, the discipline was not appropriate.

Appellant asserted that his positive attitude, acceptance of responsibility during the departmental investigation, and decision to confront his [redacted] should cause his discipline to be reduced from that of discharge to a lesser discipline.

Appellant further claimed that 1) the penalty was disproportionately harsh and excessive, 2) that Appellant was subjected to disparate treatment, in that employees similarly situated were not subject to the same discipline, 3) that the Department failed to establish a nexus between the complained of conduct and the performance of appellant's duties, and 4) that the Department failed to follow the precepts of progressive discipline.

On March 24, 2010, the Commission defined the issues in this matter as:

1. Are the allegations contained in the department's letter of January 19, 2010 true?

2. If any or all are true, is the discipline appropriate?

DEPARTMENT'S WITNESSES

1. Lt. Karl Schow, conducted internal affairs investigation
2. Deputy Vivian Garcia, arresting officer
3. Deputy Christine Ostander, field training officer

4. Custodial Assistant Adrianne Wynn, jailer
5. Sgt. Dana Chemnitzer, liason to District Attorney's office
6. Division Chief Alexander R. Yim, decision maker
7. Sgt. Anthony Campbell, field sergeant
8. [redacted] victim of hit and run accident

APPELLANT'S WITNESSES

1. Deputy Fidel Parra, character witness
2. Sgt. Michael Modica, character witness
3. Bob Ghan, character witness
4. Sgt. Eric Costano, character witness
5. Officer Brodie Seagrov, character witness
6. Sacha Vasaeisefat, present employer
7. Appellant Deputy Juan Rubio

DEPARTMENT'S EXHIBITS

1. Letter of Imposition, dated January 19, 2010
2. Letter of Intent, dated December 8, 2009
3. Disposition Sheet
4. Guidelines for Discipline
5. Personnel Investigation form and Admonition Forms for Witnesses
6. Summary of Interview of Deputy Vivian Garcia
7. Summary of Interview of Christine Ostrander

8. Summary of Interview of Sergeant Anthony Campbell

9. Summary of Interview of Custody Assistant Adrianne Winn

10. Summary of Interview of [redacted]

11. Summary of Interview of Juan Rubio

12. Memorandum dated June 2, 2008 from Deputy Vivian Garcia

13. Memorandum dated June 2, 2008 from Deputy Christine Ostrander

14. Memorandum dated June 1, 2008 form Sergeant Anthony Campbell

15. Memorandum dated June 2, 2008 from Custody Assistant Adrianne Winn

16. Not in evidence

17. Complaint Report dated June 1, 2008 for arrest of Juan Rubio

18. Traffic Collision Report dated June 1, 2008

19. Supplemental Report of Deputy Jeffrey Tibbetts

20. Impounded Vehicle Report dated June 1, 2008

21. DMV form for Chemical Test of June 1, 2008

22. DMV Administrative Suspension Order

23. Arrestee Medical Screening Form

24. Not in evidence

25. Booking and Property Report

26. Sheriff's Department Additional Charges Record

27. Sheriff's Department Intoxication Assessment Sheet

28. Crime Summary Information/ Probable Cause Declaration

29. Live Scan Fingerprint Information System Record

30. Exhibit withdrawn

31. Exhibit withdrawn

32. Memorandum from Alexander R. Yim

33. Misdemeanor complaint in People vs. Juan Carlos Rubio

34. Certified Copy of Docket Sheet in People vs. Juan Carlos Rubio

35. Exhibit withdrawn

36. Investigator's Log

37. Memorandum from Karyn Mannis

38. Letter of Imposition to Deputy Juan Rubio dated September 30, 2008 (prior discipline)

APPELLANT'S EXHIBITS

A-1. Letter of intention to suspend for 10 days, dated June 10, 2009

A-2. Letter of intention to suspend for 10 days, dated December 11, 2008

A-3. Letter of intention to suspend for 25 days, dated April 15, 2008

A-4. Letter of intention to suspend for 15 days, dated February 22, 2008

A-5. Letter of intention to suspend for 15 days, dated September 19, 2007

A-6. Letter of intention to suspend for 5 days, days, dated May 2, 2007

A-7. Letter of intention to suspend for 20 days, dated March 7, 2007

A-8 Letter of intention to suspend for 15 days, dated March 16, 2006

A-9. Letter of intention to suspend for 10 days, dated August 25, 2004

A-10 Letter of intention o suspend for 30 days, dated May 27, 2004

A-11 Letter of intention to suspend for 15 days, dated February 12, 2004

A-12 Letter of intention to suspend for 30 days, dated November 21, 2003

DEPARTMENT'S OPENING STATEMENT

Deputy Sheriff Juan Rubio was arrested on June 1, 2008 for Vehicle Code Section 23102(a) and (b), driving under the influence of alcohol, and V.C. 20002(a), hit and run driving. He was off duty, and involved in a traffic accident with [redacted] in which he failed to stop for a red signal and hit a vehicle making a left turn. He failed to stop and identify himself, and left the scene. Approximately one hour later, Mr. [redacted] was driving on the 605 Freeway, several miles from the scene of the accident, and observed the car that hit his vehicle. It was stopped on the side of the freeway and the driver was standing on the shoulder near his now disabled vehicle. Mr. Rubio refused to give Mr. [redacted] his driver's license and insurance information. A highway patrol officer came to the scene, and Mr. Rubio was belligerent, uncooperative, and disrespectful. He made false statements to the officers, telling them he was not drinking, and said the accident occurred on the freeway when he hit the divider.

Mr. Rubio subsequently pled nolo contender to the charge of V.C. 23102(b) and V.C. 20002(a).

TESTIMONY FOR THE DEPARTMENT

1. [redacted] (testified with an interpreter Sarah Rodriguez).

He testified that on Sunday June 1, 2008 at 11:44 a.m. he was involved in a traffic accident on Imperial Highway between Pioneer, close to the 605 freeway. He was driving a Nissan minivan, travelling east bound on Imperial, proceeding on a green arrow to make a left turn into the Food For Less parking lot. While turning, a small green pickup, driven by Mr. Rubio, suddenly came west bound and ran a red light, hit him on the back of his vehicle, and knocked the bumper off his car. The driver left the scene and kept going west on Imperial.

Sometime later after shopping, he was going home on the freeway and at Alondra he saw the car that hit him, parked on the side of the freeway. He stopped and went over to talk to the driver and asked why he didn't stop. He noticed that he smelled like alcohol. He asked for the driver's insurance and drivers license so he could get his car fixed. The driver offered to pay him, but Mr. [redacted] wanted to see his insurance policy. The driver showed his police badge and said he was a cop and that Mr. [redacted] should be afraid of him. Mr. [redacted] told Mr. Rubio it would be worse for him if the police arrived, because he smelled alcohol. The highway patrol vehicle arrived, a motorcycle officer arrived, and a total of three others came. The police officer asked Mr. Rubio how the accident happened and he said he hit a wall on the freeway. His car didn't work any more. The police saw paint from Mr. Rubio's car on his car.

2. DEPUTY VIVIAN GARCIA

She testified that she has been with the Sheriffs office for 14 years. On June 1, 2008 she got a radio call to handle a hit and run suspect whose car was disabled, facing south bound on the 605 freeway at Alondra. When she arrived at approximately 12:15 p.m., there was a California Highway Patrol vehicle, a gold minivan driven by Mr. [redacted] a disabled GM truck belonging to the suspect Rubio, and a tow truck.

Mr. Rubio did not identify himself initially. She observed damage to his vehicle and asked him what happened to it. He said he had been involved in an accident along the freeway. He said he was southbound in the right hand lane, and another vehicle, which was in the left lane swerved into his lane, and he swerved to avoid him, and collided into the concrete right curb of the freeway.

She observed that he appeared to be under the influence of alcohol. She observed his breath, his eyes were bloodshot and glazed, and he was slurring his words. She observed

damage to the front end of his green colored vehicle which was located 3-4 feet off the ground, and that the curb was lower to the ground. She also observed a green paint transfer on Mr. [redacted] vehicle.

Highway Patrol officer [redacted] told her that the Mr. Rubio was a Deputy Sheriff, and gave her Mr. Rubio's flat badge and driver's license.

She concluded that the traffic accident happened in the city of Norwalk and not on the freeway. The driver of the other car, Mr. [redacted] was present, and he told Off. Vargas that the accident happened about 11:45 a.m. when he was East bound on Imperial Highway, preparing to make a left turn into the Food For Less parking lot. He turned left on the green arrow, and Mr. Rubio, who was west bound, failed to stop for the red light and collided with him. He stopped, saw the other driver make eye contact with him but didn't stop, and continued west bound on Imperial and went south bound onto the freeway. He later observed a disabled vehicle stopped along the freeway, and he pulled over to talk to the driver. He asked the driver for his insurance information and said he "just wanted to get his car fixed." Mr. Rubio refused to provide insurance information and didn't want to make a police report. Mr. [redacted] said "I know you've been drinking." Mr. Rubio showed him his badge, and said, "I am the police."

Mr. Rubio ignored her commands. He was disrespectful to her, sucked his teeth, and gave short answers. A vehicle arrived at the scene and Mr. Rubio told her it was his girlfriend, and he ran back to her car. She had to grab him and pull him back to safety.

She administered the field sobriety examination and Mr. Rubio performed poorly. He kept calling her "honey." Mr. Rubio was arrested, handcuffed, and transported to Norwalk. At the station, he agreed to take the PAS test in the station parking lot. Deputy Ostrander gave the

intoximeter test at the station. During the booking in the lockup area of Norwalk, she observed that that Mr. Rubio was angry, belligerent and disrespectful.

Mr. Rubio told her he didn't have any tattoos but she observed a tattoo on the back of his neck that said "Mama Tried." Mr. Rubio said "I guess I forgot. You must be very proud of yourself for arresting a deputy."

3. DEPUTY CHRISTINE OSTRANDER

She testified that she has been a Deputy Sheriff for 13 years, worked at the Norwalk station in patrol for 9 years, [redacted] She had been working with Deputy Garcia, [redacted]

She received a radio call for a Hit and Run accident on the freeway, where the victim of the hit and run had located the suspect driver. She and Officer Garcia arrived at the scene and she observed Garcia administer the field sobriety exam to Mr. Rubio. She seated Mr. Rubio in the back seat of her radio car, and smelled a strong odor of alcohol on his breath, and his eyes were bloodshot, watery and glassy. He told her he hadn't been drinking anything.

She administered a Preliminary Alcohol Screening test, and it registered .198% and .187% blood alcohol. At 2:29 p.m. she gave Mr. Rubio the intoxilator breath test which showed he had a blood alcohol reading of .18%.

4. SGT. ANTHONY CAMPBELL.

He testified that he has been in the Sheriffs Office for 24 years, and has been a sergeant for [redacted] He was the field sergeant at the scene. He responded to an incident involved in Mr. Rubio on the 605 freeway. He received a radio call that a deputy made contact with an off

duty deputy. He spoke to Deputy Garcia at the scene, and she told him that Mr. Rubio was not cooperative with her. He spoke to Mr. Rubio and asked if he was involved in an auto accident and he said "no." He observed Mr. Rubio and smelled the odor of an alcoholic beverage on his breath. He was chewing gum. He asked Mr. Rubio if he had consumed alcohol and he said "no."

He also spoke with Mr. Uitz and asked him what had happened. Mr. Uitz said approximately 30-40 minutes earlier, a green truck had hit him and continued to go. He later spoke to Mr. Rubio and asked him to exchange information. Mr. Rubio told him "no, I'll pay for it in cash." Mr. Rubio said he was the police and showed him his sheriff identification badge.

5. CUSTODIAL ASSISTANT ADRIANNE WYNN.

She testified that she has been with the Sheriffs office for 14 years, working as a Custody Assistant and Jailer at the Norwalk station for 12 years. She observed Mr. Rubio during the booking procedure with Officer Garcia present. Mr. Rubio said "This is your big arrest. I guess you're too short to see my tattoo, so I forgot about it." Mr. Rubio was obnoxious, belligerent and unprofessional. He was sucking his teeth as a sign of disrespect.

6. SGT. DANA CHEMNITZER

He testified that he has been with the Sheriffs Office for 22 years. He was with the Internal Affairs Bureau from July 2008 to July 2009, investigating administrative cases involving misconduct by employees. He was the criminal monitor in Mr. Rubio's criminal case, working as liaison with the district attorney's office. He prepared an investigator's log of all proceedings in the case. The log showed that Mr. Rubio pled guilty to 2 counts.

7. LT. KARL SCHOW

He testified that he was employed by the Sheriffs Office for 23 years. He conducted an investigation of Deputy Rubio, prepared an Internal Affairs Investigation package, interviewed witnesses Deputy Vivian Garcia, Deputy Christine Ostrander, Sgt. Campbell, A. Winn [redacted] and Appellant Rubio. He reviewed the criminal complaint, traffic accident report, vehicle impound report, Department of Motor Vehicles report, memoranda prepared by witnesses, and submitted the report to the Department's decision maker.

He admitted he has no personal knowledge of any events, and didn't observe the incident or the booking. He only interviewed people and prepared documents, and had no impact on the decision.

8. DIVISION CHIEF ALEXANDER R. YIM

He testified that he has been with the Department for 28 years. He is Division Chief of the Correctional Services Division, overseeing 3000 employee at the Inmate Reception Center.

He determines if a violation of policy had occurred, and determines the level of discipline. He was the department decision maker.

He reviewed the case, prepared a summary of the Rubio case, and presented it to Undersheriff Waldie and Assistant Sheriff Cavanaugh, who approved of the discipline of the discharge of Mr. Rubio. Mr. Rubio had denied the hit and run, denied the drinking, and conducted himself in an unprofessional manner in violating many policies of the Department.

In regard to general behavior, a deputy is held to a higher level of expectation than a mere citizen. In regard to professional conduct, a deputy must obey all laws, act honorably,

and respect the dignity of all people. In regard to conduct to others, whether on duty or off duty, a deputy should act in a dignified manner to all people. A deputy must not obstruct an investigation, and should fully cooperate with all members of law enforcement and citizens. In regard to cooperating during a criminal investigation, a deputy should fully cooperate by giving truthful answers. In regard to making false statements, a deputy should always tell the truth. The Department's performance standard is for a deputy to act in a professional manner at all times.

He determined that Mr. Rubio violated each of the above listed departmental policies. While off duty, he was involved in a hit and run accident. He was required to stop and render aid to anyone involved in a traffic accident. By driving under the influence of alcohol, he failed to obey the law, left the scene of an accident, and failed to exchange information. His behavior was unprofessional at the scene and at the station. He obstructed an investigation and displayed his badge to the victim of the accident. He was untruthful by stating the accident occurred on the freeway, and by stating he had not been drinking alcohol.

In making his decision to discharge Mr. Rubio, he considered whether there were any mitigating or aggrevating circumstances. He said the severity of Mr. Rubio's conduct influenced his determination. There were no mitigating circumstances. Mr. Rubio was 100% responsible for his action because of his untruthfulness. He was untruthful at the scene and at the station, and didn't take full responsibility for his actions. He said there was no other decision to be made except discharge.

[redacted]

[redacted] He decided that discharge was the appropriate discipline. The present conduct was like a duplication of the earlier offense. Mr. Rubio had abused his authority, and he didn't trust him to act professionally.

He used the Department Guidelines for Discipline to assess the proper discipline. The range of discipline includes discharge. Lesser discipline would not be effective. The more severe incident occurred one and a half years after the earlier incident. Mr. Rubio had a traffic accident, left the scene and fled, was stopped because of a flat tire, and then exhibited unprofessional behavior to other officers. He testified that he couldn't take the chance and allow Mr. Rubio to work on the Sheriffs Department. As a law enforcement service provider, you can't have deputies who drive, flee, bully the victim, and are being disrespectful to their own department.

Progressive discipline is discipline to be corrective, not punitive. The decision maker is not mandated to impose the highest level of discipline. He had the option to not discharge Mr. Rubio.

Mr. Rubio had been with the Sheriffs Department for 8 years, [redacted] 4 years as a Deputy. [redacted]

In his interview with Lt. Schow, Mr. Rubio acknowledged that he was under the influence of alcohol and that he left the scene, and admitted that he didn't use good judgment.

In regard to the issue of disparate treatment, he testified that the evidence of the discipline imposed on 12 other deputies, for periods of from 5 to 30 days, where no termination or discharge was ordered, didn't contain facts indicating whether there were mitigating or aggrevating circumstances, or whether those deputies had received any prior discipline. Other deputies are not always discharged after being arrested for driving under the influence. Although he could have imposed a 30 day suspension, he considered the totality of the circumstances, and in the exercise of his discretion, he determined that discharge was appropriate in this case.

APPELLANT'S OPENING STATEMENT

On June 1, 2008, Appellant made mistakes in regard to [redacted] having a traffic accident, being disrespectful to deputies, and not giving accurate answers to officers at the scene. [redacted] which should be considered as a mitigating factor.

He was a dedicated Deputy Sheriff with superior work performance, and received commendations on the job.

[redacted]

The excessive discipline imposed by the Department should be set aside and he should be reinstated by the Department.

TESTIMONY FOR THE APPELLANT

1. DEPUTY FIDEL PARRA JR.

He testified that he has been with the Sheriffs department since for 16 years. He currently works as a Senior Bonus Deputy at the Inmate Reception Center [redacted]

[redacted]

and has formed the opinion that Mr. Rubio was an outstanding deputy. He observed that Mr. Rubio was a dedicated, hard worker, always on time, with a clean and neat appearance, and was a team leader who helped other deputies. He said that he would have no problem if Mr. Rubio was reassigned to him in any assignment and would want Rubio to work for him. It wouild not change his opinion if he knew Mr. Rubio had a prior alcohol related discipline.

He gives imput to employee performance evaluations, but he does not sign performance evaluations rating other deputies, and he doesn't have input in disciplinary proceeding.

2. SGT. MICHAEL MODICA

He testified that he has been in the Sheriffs Department since 1988. He has known Mr. Rubio as his direct supervisor at the Inmate Reception Center for 11 months. He had contact with him every day, 8 hours a day, 5 days a week. He formed the opinion that Mr. Rubio was a good deputy, a hard worker, dedicated, knowledgeable of his job and duties, with integrity and overall professionalism.. He would have no problem being assigned to work with him in the future.

[redacted]

3. ROBERT GHAN

He testified that he retired from the L. A. Sheriffs Office after serving from 1969 to 1988. [redacted]

[redacted]

[redacted] Mr. Rubio was dejected and hit bottom, but now is active in life, with his family, working, and is an asset to his community. He is remorseful, has made amends to others he has harmed, and is following the program very well.

4. SGT. ERIC CONSTANO

He testified that he has been with the Sheriffs office for over 21 years. He is currently a Sergeant in the Emergency Operations Bureau. He has been a member of the [redacted] He has known Mr. Rubio for the last 1½ years, and has formed the opinion that Mr. Rubio is taking his suggestions and he has inspired him [redacted] Mr. Rubio has earned his trust and faith.

5. OFFICER BRODIE SEAGRAVE:

[redacted]

He has known Mr. Rubio for 1½ years, and has seen him at [redacted] meetings. Mr. Rubio's demeanor has changed [redacted]

6. SACHA VASAEISEFAT

He testified that he is a consultant and field operations supervisor for a business that investigates counterfeit brand name merchandise. He has employed Mr. Rubio for the last six months as an undercover investigator. His work has been extremely dependable and reliable. He has a positive attitude. He is one of the best investigators he has worked with, and gives 120%.

7. APPELLANT JUAN RUBIO

He testified he was a Los Angeles County Sheriff's security officer from 2001-2005, and served as a Deputy Sheriff since 2006. His performance evaluations records contained commendations.

[redacted]

He said he was drinking beer every day after work from January 1 until the day of his arrest. He had also been drinking hard whiskey. On Sunday June 1, 2008 he left a friend's house in the San Gabriel Valley, hit Mr. [redacted] vehicle, went onto the freeway, pulled over to the side, was contacted by Mr. [redacted] and was arrested for 502 and hit and run. The accident

was around noon. He had last consumed alcohol the previous afternoon, around 6-7 p.m. He has had blackouts. He doesn't remember stopping after the accident. He stopped on the side of the 605 freeway because his tire had blown out. He talked to Mr. [redacted] on the side of the freeway. He asked how he would be paid for the damage to his car. He wanted his insurance card, but he didn't believe he had it at the time. He doesn't remember if he showed his sheriff's badge to Mr. [redacted] He doesn't remember what he said to Deputy Garcia or if he was rude to her. He doesn't remember what happened at the Norwalk Sheriff station. He denied drinking alcohol.

He said he was injured in the accident when his right hand was hurt on the steering wheel, and his right knee was sore. He went to the emergency room and needed surgery. His car was completely destroyed.

Mr. Rubio offered to compensate Mr. [redacted] in cash for the accident. He never said that he was not responsible for the accident. His insurance company paid Mr. [redacted] $5000 for the damage to his car, his medical bills , and for his pain and suffering.

In December 2009, after he was sent home, and turned in his badge and gun, he stopped drinking completely. He knew he would be fired or discharged by the Department. He immediately went to [redacted] on December 14, 2009. He hasn't had a drink since then.

He admitted that he didn't have a clear recollection of the events of June 1. He had no reason to believe that the department's witnesses were not truthful. [redacted]

DEPARTMENT'S ARGUMENT

Appellant's misconduct was egregious. It is undisputed that the charges and allegations against Appellant are true.

Appellant's actions and conduct during the incident are not excused by his voluntary intoxication.

Appellant's behavior during the incident demonstrated that he believed he was entitled to special treatment because he was a deputy sheriff.

Discharge is the appropriate discipline given the severity of Appellant's misconduct. Prior discipline was not effective in changing Appellant's behavior.

Appellant was not subjected to disparate treatment.

Appellant's post-discharge efforts to rehabilitate himself by becoming sober does not lessen the severe harm he caused to the public service.

APPELLANT'S ARGUMENT

The discipline imposed by the Department was not appropriate, and Appellant should be reinstated back to his prior position as deputy sheriff, with his discipline reduced to a level of discipline less than discharge.

Discharge was an excessive penalty. During his service as security officer and deputy sheriff, Appellant had only one prior incident of discipline, a 10 day suspension for disorderly conduct during an off duty incident.

Appellant's conduct at the scene, his failure to fully cooperate with authorities at the scene, and his making inaccurate statements to Mr. [redacted] and Department investigators were directly influenced by his consumption of alcohol.

The Department violated its own policy of progressive discipline, and his discipline was significantly more harsh than other employees similarly situated, which constituted disparate treatment.

DISCUSSION

There is no dispute as to the allegation that Appellant was driving while under the influence of alcohol, with a blood level more than twice the legal limit of .08%. There is also no dispute that Appellant was involved in an accident, failed to stop, identify himself, or provide evidence of insurance to the other driver, and immediately left the scene. There was overwhelming evidence that Appellant was belligerent, disrespectful, and dishonest in his dealings with the arresting officers, both at the scene and at the police station. His conduct was unprofessional and a discredit to his position as a peace officer. The Department proved by uncontroverted evidence that the charges against Appellant were true. Their witnesses were honest and credible.

The remaining issue is whether Appellant's conduct, as outrageous as it was, should result in his discharge from the department. He had a good work record, was appreciated by his supervisors, got along well with the public, and had received several commendations. [redacted]

The decision maker, Division Chief Yim, who had 28 years experience with the Sheriffs Department, was a very credible witness. He appeared to be sincere, fair, dedicated, and reasonable. Unlike some decision makers that have testified in other Civil Service disciplinary proceedings, Chief Yim was not hard-nosed, rigid or inflexible. He reached a well reasoned decision and explained the

reasons for his decision to order the discharge of Appellant. He said the Department could not take the chance to retain an officer who breaks the law, leaves the scene of an accident, bullies the accident victim, and lies to law enforcement officers, and then give him a further opportunity to commit additional misconduct.

[redacted]

The fact of the arrest for driving under the influence of alcohol was not the only reason for Appellant's discharge. In addition to his failure to obey the law, Appellant obstructed an investigation, failed to cooperate with law enforcement officers, abused his authority, was dishonest, and acted in an undignified manner. The fact that Appellant had received commendations for his work was not enough of a mitigating factor to overcome the overwhelming evidence of illegal and irresponsible conduct .


[redacted]

[redacted] Such evidence did not outweigh the overwhelming evidence presented by the Department which established his misconduct, and that the decision maker reached a well reasoned decision to discharge him. Where the Department lacks confidence in an officer's ability to properly perform his job, discharge is the appropriate type of discipline to be imposed.

FINDINGS OF FACT

1. Appellant, an off duty Deputy Sheriff, was arrested on June 1, 2008 for driving under the influence of alcohol and hit and run driving.

2. Appellant failed to stop for a red light signal and struck a vehicle which was lawfully making a left turn into a Food For Less parking lot at Imperial Highway and Pioneer Blvd.

3. Appellant failed to stop at the scene of the accident, failed to exchange identification with the other driver, and immediately fled the scene.

4. Approximately 45 minutes later, the other driver observed Appellant's damaged and disabled vehicle stopped on the shoulder of the 605 Freeway near Alondra.

5. When the other driver approached and asked for his proof of insurance, Appellant refused to show it and told the other driver he was the police, displayed his Sheriff's badge, and said he should be afraid of him.

6. Appellant told the arriving Sheriffs Officer that he was not involved in a hit and run accident, explaining the damage to his car occurred when another car on the freeway swerved into his lane, and he was forced to swerve into the curb to avoid a collision.

7. Appellant displayed the objective symptoms of an odor of alcohol on his breath, bloodshot, watery and glassy eyes, and mumbling speech.

8. Appellant registered .18% blood alcohol, more than twice the legal limit of .08%.

9. Appellant was belligerent, angry, dishonest, rude, and disrespectful to the arresting officers.

10. Appellant pled nolo contendre to the criminal complaint for driving with a blood alcohol of more than .08%, and to the charge of misdemeanor hit and run driving.

[redacted]

12. After a departmental investigation, the decision maker reviewed all the evidence, and in the exercise of his discretion, he determined that discharge was the only appropriate discipline that should be imposed.

13. During the period from 2003-2009, records showed that 12 deputy sheriffs received discipline of from 5 to 30 day suspensions in alcohol related offenses. The Department did not discharge any of them.

14. In imposing the discipline of discharge, the decision maker considered the totality of the circumstances, the aggrevating factor of a recent prior discipline, and the absence of any compelling mitigating factors.

[redacted]

17. Character witnesses and previous supervisors established that Appellant was an outstanding deputy, a hard worker, with integrity and professionalism.

CONCLUSIONS OF LAW

1. The Department established by a preponderance of the evidence the truth of the charge that Appellant drove a vehicle while under the influence of alcohol and was involved in a hit and run accident.

2. The Department established by a preponderance of the evidence that upon consideration of the totality of the circumstances, that discipline of dismissal was appropriate and reasonable.

3. Appellant failed to prove by a preponderance of the evidence that the discipline of discharge was not appropriate.

4. Appellant failed to prove by a preponderance of the evidence that althought other deputies were not discharged for alcohol related offenses, the Department subjected Appellant to disparate treatment.

RECOMMENDATION

It is respectfully recommended that the Discharge of Juan Rubio from the position of Deputy Sheriff, ordered by the Los Angeles County Sheriffs Department should be SUSTAINED.

Respectfully submitted,

Dated: June 22 , 2011

John D. Harris

JOHN D. HARRIS
Hearing Officer



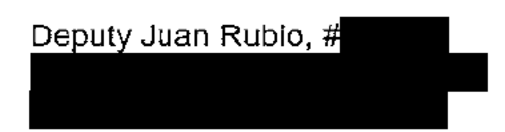
County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

January 19, 2010



Deputy Juan Rubio, #[redacted]

Dear Mr. Rubio:

On December 8, 2009, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2221172. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, your Division Chief determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on January 19, 2010.

An investigation under File Number IAB 2221172, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about June 1, 2008, while off duty, you were arrested by Norwalk Sheriff's Deputies for 23152(a) & (b) CVC, Driving Under the Influence of Alcohol with a Blood Alcohol Content of .08% or Higher and 20002(a) CVC, Hit and Run with Property Damage. On December 12, 2008, you pled nolo contendere to 20001(a) CVC and 23152(b) CVC. By your actions, you have brought discredit upon yourself and the Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/040.76, Obstructing an Investigation/Influencing a Witness; and/or 3-01/040.85, Cooperation During Criminal Investigation; and/or 3-01/040.70, False Statements; and/or 3-01/050.10, Performance to Standards; and/or 3-01/050.15, Duties of Deputy Personnel, on or about June 1, 2008, while off duty and intoxicated, you left the scene of a traffic collision on Imperial Highway in the City of Norwalk wherein you struck Mr. [redacted] vehicle and then fled the scene. Mr. [redacted] later found you standing on the shoulder of the southbound 605 Freeway near your disabled vehicle and approached you to exchange information. You refused to give him your insurance information and driver's license and Mr. [redacted] called the California Highway Patrol to respond to the location. Norwalk Sheriff's Deputy Vivian Garcia also responded. Deputy Garcia attempted to ask you some pre-field sobriety test questions and you behaved in a belligerent and/or uncooperative and/or disrespectful manner, and/or made false statements, as evidenced by, but not limited to, telling Deputy Garcia that an unknown person cut you off on the freeway, causing you to collide with the west curb of the freeway, and/or saying to Deputy Garcia, "Honey, the truth will come out," or words to that effect, and/or ignoring her commands and continuing to talk on your cell phone, and/or walking away from Deputy Garcia and contacting your girlfriend who was now parked on the shoulder of the freeway, and/or continuing to ignore Deputy Garcia's commands to return to her position, necessitating that Deputy Garcia approach you and grab you by the arm to move you to a safer location. When Deputy Garcia questioned you about any medical problems or medication you might be taking, you responded by saying words to the effect of, "No already!" After Sergeant Anthony Campbell and Deputy Christine Ostrander arrived on scene, you continued to be uncooperative and/or made false statements by denying you had been drinking and/or claiming you had not consumed alcohol in a week and/or telling them you struck an unoccupied vehicle and waited 50 minutes for someone to arrive even though the collision occurred on Imperial Highway and Mr. [redacted] had been inside the vehicle at the time of the collision, and/or lying to Sergeant Campbell about your unit of assignment. During the

questioning, you sucked your teeth and rolled your eyes in a disrespectful and belligerent manner. During the booking process when Deputy Garcia pointed out a large tattoo on your neck and asked you why you told her you had no tattoos, you responded by saying words to the effect of, "I must have forgotten about it or you're just too short to see it." Moreover, you made comments to Deputy Garcia, including but not limited to, words to the effect of, "You must be really proud of yourself. This must be quite a hook for you, anything for a stat ."

Thus, you failed to conform to the work standards established for your position as a deputy sheriff. Moreover, your actions during this incident are in direct conflict with this Department's Core Values, Mission and Creed and you have brought discredit and embarrassment upon yourself and the Sheriff's Department.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Larry L. Waldie

LARRY L. WALDIE
UNDERSHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

LLW:RAA:KM:bs

c: Advocacy Unit
Alexander Yim, Chief, Correctional Services Division
Gerald K. Cooper, Captain, Inmate Reception Center
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, Captain, Personnel Administration